

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 287 (LTS)

6 SEAN STEWART,

7 Defendant.
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8 New York, N.Y.
9 September 8, 2015
10 3:00 p.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BROOKE E. CUCINELLA

Assistant United States Attorney

18 TAI H. PARK

19 Attorney for Defendant

TAMI S. STARK, Co-counsel

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1 DEPUTY CLERK: This case is United States of America
2 versus Sean Stewart.

3 THE COURT: Thank you.

4 Counsel, your appearances, please.

5 MS. CUCINELLA: Brook Cucinella on behalf of the
6 government. Good afternoon, your Honor.

7 THE COURT: Good afternoon, Ms. Cucinella.

8 MR. PARK: Good afternoon, your Honor. Tai Park and
9 Tami Stark for Mr. Stewart.

10 I want to apologize in advance. We did send a letter
11 this morning seeking the Court's approval to excuse
12 Mr. Stewart's presence for this pretrial conference.

13 THE COURT: I just received the letter.

14 MR. PARK: I apologize, Judge.

15 Basically, because of his circumstances, and by that
16 what I meant is that he doesn't have a job right now, he's had
17 to move out of the apartment, and apparently, there was an
18 unexpected difficulty in getting approval for getting the
19 apartment, delayed his move, and his move continued from this
20 weekend until today, and he had not focused on the fact that he
21 had this pretrial conference.

22 I had a discussion with him about that this morning,
23 and I told him that I would try to get your Honor's approval,
24 with the government's consent, to waive his presence, and
25 that's why I sent the letter in.

1 THE COURT: Thank you for explaining. Good afternoon,
2 Mr. Park.

3 Ms. Stark.

4 Since I gather it confirms in your letter that no one
5 intends to raise anything other than scheduling issues in this
6 conference, the request to waive Mr. Stewart's appearance is
7 granted.

8 MR. PARK: Thank you, your Honor.

9 THE COURT: Ms. Cucinella, may I have the status
10 report?

11 MS. CUCINELLA: Certainly, your Honor.

12 The government has produced discovery in this case.
13 We have been conferring with defense counsel about the
14 production of that discovery and hoping to deal with any issues
15 that have arisen, as well as to identify, through a very
16 detailed index, all of the documents that we have produced to
17 assist them with navigating that.

18 It's our understanding that defense counsel intends to
19 move for a bill of particulars. The government intends to
20 oppose that given the circumstances in this case.

21 It's also our understanding that defense counsel would
22 also like to request an additional week to file their motions.

23 Other than that, things are proceeding on course.

24 THE COURT: Thank you.

25 Mr. Park, anything?

1 MR. PARK: I think that's right, your Honor. There
2 have been unexpected difficulties, just a function of the
3 modern age where one gets a hard drive in discovery, and then
4 it's a matter of sifting through that to figure out what's
5 relevant and what's not relevant.

6 Even as late as August 31st, last week, we had the
7 discussion with the government about how to access certain and
8 how to use certain documents and had that sorted out.

9 Today, Ms. Cucinella, in court, produced certain
10 documents that were obtained from the hard drive of Richard
11 Cunniffe, who has pleaded guilty in this case. We have not yet
12 had a chance to review that, and we obviously will.

13 I don't expect, Judge, right now for any of that to
14 alter our motion schedule, but as Ms. Cucinella indicates, I
15 would like to request from your Honor a one-week extension of
16 our motion due date, which is currently scheduled for this
17 Friday.

18 I can represent, your Honor, that, as to what the
19 issues will be on the motion, it will not involve an
20 evidentiary hearing, it will be a motion largely directed to
21 the indictment, to dismiss the indictment for failure to
22 satisfy certain elements of insider trading, number one.

23 Number two, in the alternative, always hedging,
24 seeking a bill of particulars from the Court in the event the
25 Court decides that the indictment can withstand the motion to

1 dismiss.

2 Again, I expect that all of those things we can file
3 next Friday. I do want to give myself a little bit of time in
4 the event something arises between now and next Friday. If
5 there is something in the discovery that we have not yet gotten
6 our arms around that is a surprise, that may cause us to seek a
7 different aspect for a motion. It's hard for me to predict
8 what that would be right now, Judge, because there was no
9 search warrant executed against any items belonging to Mr. Sean
10 Stewart.

11 We did get from codefendants a copy of a search
12 warrant affidavit that was submitted in connection with getting
13 data from Robert Cunniffe and Richard Cunniffe. We've since
14 had a chance to review that affidavit. I don't think that
15 there's any basis for us to make a motion on the basis of that.

16 The only reason for asking for any additional time,
17 Judge, is just to enable us to take a quick further look at
18 what we now have from the government's initial production, as
19 well as Mr. Cunniffe's production, to see if there's anything
20 else that should be including in that motion to dismiss.

21 My understanding is that the government does not
22 object to a one-week extension and, of course, we would propose
23 to your Honor an altered schedule to account for the one-week
24 that we would be seeking.

25 THE COURT: Thank you.

1 Ms. Cucinella.

2 MS. CUCINELLA: Mr. Park is correct, we have no
3 objection to the one-week extension request.

4 THE COURT: Would you anticipate being able to respond
5 within the usual two weeks, or is there a different briefing
6 structure?

7 MS. CUCINELLA: The original schedule had us
8 responding by October 9th, so we'd ask for an additional week
9 to just respond by October 16th. Then the reply -- I know
10 Mr. Park worked out the schedule.

11 MR. PARK: Yes, your Honor. If your Honor were to
12 consent, our motions would be due September 18th, the
13 government's opposition would be October 16th, and then our
14 reply would be October 30th.

15 MS. CUCINELLA: I believe we currently have a pretrial
16 conference scheduled for November 5th, and we both anticipate
17 that that date could remain, unless your Honor would like to
18 move it, of course.

19 THE COURT: One could not expect that I will rule on
20 the motion by November 5th, so we can keep that date for now
21 and then extend it if and as necessary given the pendency of
22 the motion factor.

23 Has time already been excluded through November 5th?

24 MS. CUCINELLA: That's correct, your Honor.

25 THE COURT: I grant the extension of time to initiate

1 motion practice and approve the proposed motion schedule.
2 Those altered dates will be reflected in the clerk's minutes
3 for the court session. Our next conference will remain
4 scheduled for November 5th.

5 What time is that, Ms. Ng? Actually, I don't think
6 I'm here on November 5th.

7 DEPUTY CLERK: No. It was November 5th at 3:15.

8 THE COURT: I guess I was tentatively scheduled to be
9 away. We do have to move the November 5th setting because I
10 simply will not be here that day. Let's put that out a couple
11 of weeks to November 19th at 2:30.

12 Would that work for everyone?

13 MR. PARK: It does for the defense, your Honor.

14 MS. CUCINELLA: It's fine for the government as well.

15 THE COURT: We'll put that out to November 19th at
16 2:30. Again, we will see where we are with respect to the
17 motion practice and any other issues at that time.

18 Is there a request for exclusion from speedy trial
19 computation for the time from now until November 19th?

20 MS. CUCINELLA: Yes, your Honor, so that the defense
21 can continue to review the discovery produced, assess what
22 motions they will make, make those motions, and to give the
23 Court time to decide them.

24 THE COURT: Any objection?

25 MR. PARK: No, Your Honor.

1 THE COURT: The application is granted. I find that
2 the ends of justice served by the granting of an exclusion from
3 the speedy trial computations for the period from today's date
4 through November 19th, 2015 outweigh the best interest of the
5 public and the defendant in a speedy trial for the reasons
6 summarized on the record by Ms. Cucinella. Accordingly, that
7 time period is excluded prospectively.

8 Is there anything else we should take up together this
9 afternoon?

10 MS. CUCINELLA: Not from the government.

11 MR. PARK: Nothing from the defense, your Honor.

12 THE COURT: Thank you. I will look forward to seeing
13 you on November 19th.

14 MR. PARK: Thank you, your Honor.

15 MS. CUCINELLA: Thank you, Judge.

16 (Adjourned)

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